

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

EDNA LOPEZ,)	CASE NO. 1:20 CV 575
)	
Plaintiff,)	
)	
v.)	JUDGE DONALD C. NUGENT
)	
COMMISSIONER OF SOCIAL SECURITY ADMINISTRATION,)	Magistrate Judge Henderson
)	
Defendant.)	<u>MEMORANDUM OPINION</u>
)	<u>AND ORDER</u>

This matter is before the Court on the Report and Recommendation of Magistrate Judge Henderson. (Docket #17.) On March 17, 2020, Plaintiff, Edna Lopez, filed her Complaint (Docket #1) challenging the final decision of the Commissioner of Social Security denying her application for Disability Insurance Benefits (“DIB”). Pursuant to Local Rule 72.2, the case was referred to Magistrate Judge Henderson.

On May 17, 2021, the Magistrate Judge issued her Report and Recommendation. The Magistrate Judge recommends that the Court reverse the Commissioner’s decision and remand this case to the Commissioner and the ALJ for further examination of whether Ms. Lopez would be able to perform her past relevant work given the limitations to her upper body extremities, and, if not, whether jobs exist that Ms. Lopez could perform given her residual functional

capacity and relevant vocational factors. The Commissioner of Social Security has indicated no objection will be filed. (Docket #18.)

Standard of Review for a Magistrate Judge's Report and Recommendation

The applicable standard of review of a magistrate judge's report and recommendation depends upon whether objections were made to that report. When objections are made to a report and recommendation of a magistrate judge, the district court reviews the case de novo.

FED. R. CIV. P. 72(b) states:

The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

The text of Rule 72(b) addresses only the review of reports to which objections have been made; it does not indicate the appropriate standard of review for those reports to which no objections have been properly made. The Advisory Committee on Civil Rules commented on a district court's review of *unopposed* reports by magistrate judges. In regard to subsection (b) of Rule 72, the advisory committee stated: "When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." FED. R. CIV. P. 72 advisory committee's notes (citation omitted).


The U.S. Supreme Court stated in *Thomas v. Arn*, 474 U.S. 140, 150 (1985): "It does not appear that Congress intended to require district court review of a magistrate judge's factual or legal conclusions, under a de novo or any other standard, when neither party objects to those findings."

Conclusion

The Court has carefully reviewed the Report and Recommendation and agrees with the findings set forth therein. The Report and Recommendation of Magistrate Judge Henderson (Docket #17) is ADOPTED.

The Commissioner's decision is hereby REVERSED and this case is hereby REMANDED for further examination of whether Ms. Lopez would be able to perform her past relevant work given the limitations to her upper body extremities, and, if not, whether jobs exist that Ms. Lopez could perform given her residual functional capacity and relevant vocational factors.

IT IS SO ORDERED.


DONALD C. NUGENT
Senior United States District Judge

DATED: May 27, 2021